THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs: 12717 and 13360 OF 2007

% 29-06-2007

Between:

Manchaboina Guravaiah & others

... Petitioners

and

The District Collector/Election Authority (Fisheries)
Nalgonda District & others

... Respondents

! Counsel for the Petitioners : Sri Palle Nageswara Rao &
Sri D.Goverdhana Chary

^ Counsel for Respondents : The G.P. for Fisheries

<Gist :

>Head Note :

? Citations:

-Nil-

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COMMON ORDER:

The subject matter of these two writ petitions is the election to the Managing Committee of the Fishermen Cooperative Society (for short "the society"), Gudibanda, Kodad Mandal, Nalgonda District.

For the sake of convenience, the parties are referred to, as arrayed in W.P.No.13360 of 2007.

The elections for the Managing Committee of the society became due. The District Collector and Election Authority, the 1st respondent, issued order dated 4.6.2007, appointing the 3rd respondent, as the election officer. According to the schedule fixed by the 2nd respondent, the notification for the election was to be issued on 21.6.2007, and the election be held on 29.6.2007. The petitioners in W.P.No.12717 of 2007 challenge the order dated 4.6.2007. They state that several members on the rolls of the society died in the recent past, and in some cases, resolutions were passed by the committee, to admit the legal heirs of the deceased members, as members. It is alleged that without updating the membership/voters list, the

respondents are proceeding to conduct the elections.

The 3rd respondent had initiated steps for conducting elections. On the ground that the elections are to be held under Rule 22-B of A.P. Cooperative Societies Rules, 1964 (for short "the Rules"), by show of hands, he did not ensure the updating or correction of the voters list, and notified 29.6.2007, as the date of election. Some of the members, who felt aggrieved, appear to have approached the Government in Animal Husbandry and Fisheries Department, the 1st respondent. Through an order, dated 21.6.2007, the 1st respondent stayed the election. The same is challenged in W.P.No.13360 of 2007.

Sri Palle Nageswara Rao, learned counsel for the petitioners in W.P.No.12717 of 2007, submits that preparation of a voters list is a *sine-qua-non*, for conducting elections, whether by following the usual procedure of filing of nominations, etc., or by raise of hands. He contends that neither the society nor the 3rd respondent have taken any steps, to up date the voters list.

Sri D.Goverdhana Chary, learned counsel for the petitioner in W.P.No.13360 of 2007 submits that preparation of voters list becomes necessary, only when the elections are held, through process of filing of nominations and conducting of polls, and the same is not necessary, where elections are held, through show of hands. Learned counsel further contends that the power to stay the election is conferred on the 1st respondent, only in exceptional cases, specified under Rule 22-C of the Rules, and the stay granted by the 1st respondent, does not accord with the Rule.

Learned Government Pleader for Fisheries submits that though the procedure prescribed under Rule 22-B was directed to be adopted, the necessary exercise to correct the voters list, was not undertaken, and for that reason, the 1st respondent had intervened in the matter. It is pleaded that the stay granted by the 1st respondent conforms the letter and spirit of Rule 22-C.

Two questions arise for consideration, in these two writ petitions. The first is, whether it is necessary to prepare and up date a voters list of a society, even where the election to the Managing Committee is held by show of hands, under Rule 22-B. The second is, whether the order of stay granted by the

1st respondent, in relation to the election of the society accords with Rule 22-C.

Different categories of societies are registered under the Act. Depending on the nature of activity undertaken by, or the composition of, the societies, the rules stipulate different procedures, in the matter of conducting election to the managing committees. The usual procedure that is followed, is contained in Rule 22. According to this, whenever the elections become due, the Election Authority shall appoint an Election Officer, and notify the schedule. Rule 22(2)(b) prescribes the manner in which the voters list is to be updated. The same provision indicates as to how the nominations are to be received, scrutinized and finalized, and the manner in which the poll is to be held, and ultimately, the declaration of results. Rule 22(2)(b) reads as under:

> "The Election Authority shall appoint an Election Officer for each society at least forty five (45) days prior to the expiry of the term of the Managing Committee for the purpose of conducting elections. The Election Schedule shall be as prescribed below.

(i) The Election Officer shall issue the communication of election and requisition for production of records and voters list to the society within three days from the date of receipt of his/her appointment orders.

(ii) The Chief Executive Officer or President of the society where there is no Chief Executive Officer shall prepare and publish the list of members eligible to vote within seven (7) days after receipt of the communication from Election Officer. It shall be village wise, with a map of territorial jurisdiction of society, arranging villages in seriatim starting from the society Head quarters to North East, maintaining contiguity, clockwise, indicating the Sl.No., Name of Member, Father's Name, Village/Locality, age, community, Sex (Male/Female).

(iii) The Chief Executive Officer or President of the society shall invite the claims or objections from the members within seven (7) days thereafter.

(iv) The Chief Executive Officer or President of the society shall communicate the final list of members eligible to vote to the Election Officer within three (3) days thereafter.

(v) A copy of the list shall be supplied to any contesting candidate on payment of actual cost as may be fixed by the society.

(vi) After receipt of the final list of members eligible to vote from the society, the Election Officer shall verify the cases and satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the Act and Rules and fix the date of Poll giving a clear fifteen (15) days election notice as prescribed in Form-1. The notice shall be signed by the Election Officer and bear the seal of the society."

In respect of the societies comprising of weaker sections, as its

members, and societies with small number of membership, Rule 22-B provides for a different procedure. Members of the Managing Committee are elected by show of hands, at a meeting held on a specified date. The provision reads as under:

> "**22-B. Mode of Election of Member of Committees of Weaker Section societies or societies having a small number of membership**:-
>
> a) The Election Officer shall notify the date and time and the place of election. The election will be held in the premises of the registered office of the society. The voting of the members of the committee of the weaker section societies or societies having a small number of membership may be done by show of hands at the general meeting convened for election. The mode and the procedure will be as follows;
>
> i) members will be admitted into the hall or premises on production of identity and after obtaining their signature or thumb impression in attendance register from 9.0. hrs to 11.00 hrs. At 11.30 hrs, the Election Officer will announce the number and category of seats on the Managing Committee to be filled. For each seat/category, he will call for nominations and announce the names of the nominations received and conduct elections as detailed below;
>
> ii) the Election Officer will read out the names of each candidate contesting and he will call upon members to express their vote by show of hands. He will record the number of courts secured by each candidate and announce it after every count.
>
> Provided that those who have polled the maximum votes in descending order will be declared elected depending upon the number of seats to be filled.
>
> (Remaining part of this provision is omitted as not necessary)
>
> …"

In the instant case, having regard to the fact that it is a fishermen Cooperative Society, comprising of members of weaker sections, the 1st respondent directed that the elections be held by show of hands, as provided for, under Rule 22-B.

It may appear at the first blush that the procedure contemplated under Rule 22-B, is entirely different from the procedure applicable for

other categories of societies, in all respects. In fact, it has been strongly contended that for conducting elections under this provision, it is not at all necessary to prepare a voters list.

On a close analysis of the provisions extracted above, and examination of the process of election, it becomes clear that the substantial difference between these two categories of elections is, only as regards the manner in which the intending candidates come into the fray of election. In the ordinary process, such candidates have to file their nominations, within a specified period, they would be scrutinized and list of valid nominations would be published, thereafter. The polling becomes necessary in the event of contest, which in turn, would be held on a notified date, duly maintaining, the stipulated time gap. In the cases covered by Rule 22-B, the nomination takes place through a very informal process, and the voting, otherwise than through ballots i.e. by show of hands, takes place then and there.

For both the categories of elections, the determination of the membership becomes necessary. Even where the election takes place, by show of hands, it is not as if any one, or every one, can come and participate in it. It is naturally those persons, who are the members and eligible to participate in the election, that would be permitted. In fact, except for small variation as to the procedure, this is an election, for all practical purposes. Show of hand by a person is treated as a vote, which is on par with the view expressed through a ballot. Therefore, even for an election, which is to take place as per Rule 22-B, list of members must be prepared and up dated. In that view of the matter, the procedure stipulated under Rule 22(2)(b), insofar as it directs preparation and updating of voters list, becomes common to both categories of elections, and the dichotomy takes

place, only from that stage onwards.

Reverting to the facts of the case, the 3rd respondent did not ensure preparation of voters list, as contemplated under the Rules, on the presumption that such an exercise is not necessary for an election, which is conducted under Rule 22-B. This, naturally, has resulted either in inclusion of ineligible or dead persons, in the list available with him, or non-inclusion of otherwise eligible candidates. The procedure prescribed under Rule 22(2)(b) takes care of this situation. Inasmuch as the same was not followed, the action taken by the election officer and the other concerned authorities, does not accord with the provisions of law.

Coming to the second version, Rule 22-C provides for three circumstances, under which the Government can stall the elections. It also mandates that whenever an order of stay is granted, the reasons there for, must be specified. In the instant case, the order of stay granted by the 1st respondent is silent about the reasons. Technically, the order challenged in W.P.No.13360 of 2007 deserves to be set aside inasmuch as it does not accord with Rule 22-C. That however, does not put an end to the controversy.

The effort of the Government was to ensure that the membership and voters list is updated, before the election takes place. The intention, with which the election was stalled, cannot be found fault with.

For the foregoing reasons, the Writ petitions are disposed of, directing that;

a) respondents 3 and 4, i.e. the Election officer and the Society, shall take steps for updating the voterers/membership list, as contemplated under Rule 22(2)b of the A.P. Cooperative Societies Rules, 1964.

b) The 2nd respondent shall issue a revised notification, providing for updating of the membership/electoral list, as provided for under Rule 22(1)(a); and stipulating the dates for the issuance of election notification, and the election, in supersession of the proceedings No.510/B/2007, dated 4.6.2007. This exercise shall be completed within 15 days from the date of receipt of a copy of this order.

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(L.NARASIMHA REDDY, J)

Dt: 29.6.2007

L.R. copy to be marked.

(b/o)

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